

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO.875 OF 2016

Dipesh Parshuram Dhodade .. Applicant

Versus

The State of Maharashtra .. Respondent

Ms.N.S.Baig i/b Mr.S.R.Baig, Advocate for the applicant.

Mr.H.J.Dedhia, APP for the Respondent State.

CORAM : PN. DESHMUKH, J.

DATED : 12th JULY 2016

P.C. :

1 The accused involved in Crime No.106/15 registered by Waghle Estate Police Station, District Thane on 6th May 2015 for the offence punishable under Section 302 IPC, has sought bail.

2 Learned counsel for the applicant has submitted that applicant is arrested on suspicion. There is no direct evidence against the applicant and since the applicant is in jail and charge-sheet is already filed, he be released on bail by imposing suitable conditions as there are no criminal antecedents against the applicant and he being 24 years of age, be released on bail.

3 Learned APP has strongly objected the application contending that there is sufficient evidence establishing

involvement of applicant, and it cannot be said that there is only circumstantial evidence against the applicant.

4 I have perused the copies of charge-sheet made available by learned APP. From the FIR, it reveals that it came to be lodged on 6th May 2015 i.e. on the day of incident by Sunil Dhonde Police Constable, who on that day along with Police Constable Sanak were on patrolling duty in Beat No.3 and 4 when at about 2.15 p.m, one person informed them that one lady is murdered behind the passport office and is lying on the road. Accordingly, both the police constables immediately reached the spot and found one female lying on the ground having assaulted by knife which was in her neck, and had sustained bleeding injuries. Both the police constables got themselves satisfied that she was no more alive. The dead body was accordingly forwarded to the hospital where she was admitted in dead condition and according to post mortem report, the deceased is stated to have sustained incised wound on the neck region admeasuring 2 cm x 1 cm, cut throat wound and injury admeasuring 4.1.5 x 1.5 Inch wound over left side with major vessels injured. Apart from above injury on neck, deceased is certified to have sustained other injuries on chest, right hand, left back forearm and the probable cause of death is stated as "*death due to shock*" due to cut throat. Post mortem report thus prima facie establishes contents of FIR.

5 So far as involvement of applicant is concerned, on perusal of statement of one Yogesh, it reveals that applicant, on the day of incident has obtained one kitchen knife from him on the false pretext saying that he is in need of same as required by his

aunt in his house, and on procuring the kitchen knife, had visited shop of one Iqbal on the same day of incident at 11.00 am where he sharpened the knife. The Test Identification Parade panchnama reveals that said Iqbal who has sharpened the knife produced by the applicant has identified the applicant to be the same person who has visited him for sharpening the knife.

6 Learned counsel for the applicant has submitted that there is no substance in above evidence as there is nothing on the knife seized by Investigating Agency to establish that it is the same knife provided by Iqbal to applicant. However, at this stage, I find no reason to consider the said submission as it reveals that the knife came to be seized which was found stuck in the wound, sustained by deceased from the spot. Similarly, it appears to be the case of prosecution that deceased was married on 28th April 2015 i.e. about two weeks prior to the incident which occurred on 6th May 2015 and accused since was interested to marry deceased, but as she married to someone else, came to be assaulted by the applicant. Above case of prosecution finds substantiated from the statement of Arti – friend of deceased.

7 Similarly, it is noted that during the course of investigation, CCTV footage in respect of place i.e. S.L. Fabricators Waghle Estate, Thane and Jain Mandir, Waghle Estate, Thane of dated 6th May 2015 at about 1.52 pm and 19.45 pm respectively is obtained where applicant is found in company of deceased. Witness Arti has identified the applicant to be the same person in the company of deceased from the CCTV footage. The incident is reported on the same day at 2.15 pm. In that view of the matter

also, it cannot be said that there is sufficient time gap between the applicant having found in company of deceased and her dead body which is recovered at 2.15 pm on the same day.

10 Having considering the evidence against the applicant as aforesaid, application is not liable to be allowed.

11 Learned counsel for the applicant in support of her application has relied upon the authority in the case of ***Bodh Raj @ Bodha & Ors Vs. State of Jammu and Kashmir*** of Hon'ble Supreme Court and has submitted that the circumstances from which inference of guilt is sought to be drawn, must be cogently and firmly established and those circumstances should be of a definite tendency unerringly pointing towards guilt of the accused, and has submitted that in the case in hand, circumstances on record are not sufficient to establish involvement of applicant.

12 There can be no dispute about the above proposition of law. However, said aspect can duly be considered at the time of trial. In view of available material against the applicant, as aforesaid it is found that there is *prima facie* case against the applicant, Application is thus rejected.

(PN. DESHMUKH, J)